



COLORADO
Department of Revenue

Taxation Division

Physical Address:
Office of Tax Policy Analysis
1375 Sherman Street, Room 607
Denver, CO 80203

Mailing Address:
Office of Tax Policy Analysis, Room 607
P.O. Box 17087
Denver, CO 80217-0087

PLR-19-005

November 27, 2019

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Child Care Contribution Credit

Dear XXXXXXXX,

You submitted a request for a private letter ruling on behalf of XXXXXX (“the Club”), regarding its XXXXXXXX (“the Project”), to the Colorado Department of Revenue (“Department”) pursuant to Department Regulation 1 CCR 201-1, 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in Department Regulation 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

Do donations made to the Club to fund the Project qualify for the child care contribution credit?

Conclusions

No, donations made to the Club to fund the Project do not qualify for the child care contribution credit.

Background

The Club is a 501(c)(3) tax-exempt organization that provides training and competition programs for XXX athletes in various snowsports, such as XXXX, XXXXX, XXXXX, XXXXX, XXXX, and XXXXX.

The Club is currently fundraising for the Project which it describes as follows:

“Approximately \$425,000 of the \$1.8M redevelopment expense is directly associated with facilities utilized by our younger athletes in after-school activities. The areas in question include the club room and gym where after-school instructional gatherings including dryland/fitness and other athlete activities will take place. We believe this capital project to be an extension of our core business and vision: to help any child with motivation to develop the skills necessary to reach their personal best. Having a dedicated clubhouse will allow our coaches to teach our young club members lifelong skills in goal setting, perseverance, and teamwork while also providing supervision in the hours between school and evening.”

The Club's draft budget for the Project includes the following expenses:

Club Room	\$ XXXXX
Gym	\$ XXXXX
Staff Offices	\$ XXXXX
Member Locker Room	\$ XXXXX
Athlete/Coach Locker Room & Offices	\$ XXXXX

Discussion

Colorado law authorizes an income tax credit for taxpayers who make monetary contributions to promote child care in Colorado.¹ Eligible contributions include donations of money for the establishment or operation of unlicensed child care programs that provide child care services similar to those provided by licensed child care centers.² Licensed child care centers are defined, in part, as facilities maintained for whole or part of the day for the care of five or more children.³ The credit is allowed only with respect to child care provided to children age twelve or younger.⁴

Licensed child care centers generally provide child care services during the day to allow parents to work. Regulations promulgated by the Colorado Department of Human Services state that child care centers "provide comprehensive care for children when the parents or guardians are employed or otherwise unavailable to care for the children."⁵ Similarly, the federal child care credit is allowed for the provision of care for children specifically "to enable [parents or guardians] to be gainfully employed."⁶

Additionally, the term "child care" is not so broad as to encompass any variety of service provided with respect to a child. Treasury regulations regarding the federal child care credit advise, for example, that the "primary function" of care "is to assure the individual's well-being and protection" and "[n]ot all expenses relating to a qualifying individual are for the individual's care."⁷ Similarly, regulations promulgated by the Colorado Department of Human Services include under the rubric of "Child Care Services" such things as health care for an ill or injured child, children's hand washing and diapering, supervision, nutrition, behavior modification, overnight care, gross motor activities, and transportation.⁸ These regulations do not contemplate the cultivation and development of a specific athletic ability, such as skiing. Furthermore, state law draws an appropriate distinction between "guest child care facilities" and "ski schools." The former provide short-term child care "[w]hile parents or persons in charge of such child are patronizing the ski area,"⁹ while the latter's purpose is "teaching children how to ski or snowboard."¹⁰

¹ § 39-22-121(1.5), C.R.S.

² § 39-22-121(2)(a), C.R.S.

³ § 26-6-102(5), C.R.S.

⁴ § 39-22-121(1.7), C.R.S.

⁵ 12 CCR 2509-8, 7.702.1.A.

⁶ 26 U.S.C. § 21(a)(1) and (b)(2). See also § 39-22-103(11), C.R.S. (explaining that "except as otherwise expressly provided or clearly appearing from the context, [terms used in Colorado income tax statutes] shall have the same meaning as when used in a comparable context in the internal revenue code" and "[d]ue consideration shall be given in the interpretation of [Colorado income tax statutes] to applicable sections of the internal revenue code...and to federal rulings and regulations interpreting such sections").

⁷ 26 CFR § 1.21-1(d). See also § 39-22-103(11), C.R.S.

⁸ 12 CCR 2509-8, 7.702.5.

⁹ § 26-6-102(16), C.R.S.

Although parents may work while their children participate in the Club's training programs, enabling parental employment is not a significant purpose of the Project. The essential purpose of the Project is also not the assurance of children's well-being and protection or the provisioning of any of the various child care services offered by licensed child care centers, but rather the development of specific athletic skills and abilities.

Finally, the child care contribution credit is allowed only for contributions made to provide care to children age twelve and younger.¹¹ The Project will be used for programs for children of all ages, including children over the age of twelve.

Based on the foregoing, it is clear that the Project will not serve "to provide[] child care services similar to those provided by a [licensed] child care center."¹² Consequently, donations made toward the Project do not qualify for the child care contribution credit.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption and representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.

¹⁰ § 26-6-103.5(6), C.R.S.

¹¹ § 39-22-121(1.7), C.R.S.

¹² § 39-22-121(2)(a), C.R.S.